

REISSUE LITIGATION

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

WILLIAM A. ELMER,

Plaintiff,

v.

GOLDENROD PIZZA LLC, a Florida limited
liability company d/b/a EAST OF CHICAGO
PIZZA and AUTOSOX USA, INC., a
Washington corporation,

Defendants.

No. 01-CV-673

PLAINTIFF WILLIAM A. ELMER'S
INTERROGATORIES TO
DEFENDANT AUTOSOX USA, INC.
WITH RESPONSES

PLAINTIFF WILLIAM A. ELMER'S INTERROGATORIES
TO DEFENDANT AUTO SOX USA, INC.

Pursuant to Rule 33, Federal Rules of Civil Procedure, Plaintiff William A. Elmer, by and through his undersigned attorneys, propounds the following interrogatories to be answered by Defendant Auto Sox USA, Inc., in writing and under oath within thirty (30) days from the date of service.

I. DEFINITIONS AND INSTRUCTIONS

1. As used in these interrogatories, the terms "you" or "your" shall mean Auto ,
Sox USA, Inc., as well as any employee, attorney or other agent acting on your behalf.

ORIGINAL

ANSWER:

See Opinion of Non-Infringement. Also, Plaintiff is estopped from claiming it invented the magnet that is commonly referred to in the industry as the RB-80 magnet.

INTERROGATORY NO 10:

Please state the factual basis and identify the evidence supporting your claim that the claims of the patent in suit is unenforceable under the doctrine of laches.

ANSWER:

The Plaintiff has been co-existing on a business level for many years with the Defendant. Over the past several years, the Defendant has witnessed the Defendant's products displayed at the various trade association conventions. Although Plaintiff has known that the Defendant has been selling magnetic car-top delivery signs since 1994, and Plaintiff's patent issued in 1998, the Plaintiff waited until 2001 to bring a cause of action for infringement.

The evidence relied upon is AutoSox's initial 26(a) disclosures Nos. 389-90, 393, 568. Other facts and evidence supporting this claim will be produced as discovery continues.

INTERROGATORY NO 11:

Please state the factual basis and identify the evidence supporting your claim that the claims of the patent in suit are unenforceable under the doctrine of patent misuse.

ANSWER:

The Plaintiff has engaged in Patent Misuse in its licensing or selling of its car-top delivery signs to Dominoes Pizza and Pizza Hut. Evidence in support of this is AutoSox's

INTERROGATORY NO 18:

Please state your factual basis for and identify the evidence supporting your claim that the subject matter of the claims in the patent in suite were reduced to practice and commercially used at least one year prior to the effective filing date of the patent in suit.

ANSWER:

The factual basis for this claim is that the Plaintiff made, used, sold, or offered for sale the patented device in question more than one year before the effective filing date. The evidence supporting this claim is Autosox's 26(a) initial disclosures Nos. 505-516, 530. Other facts and evidence supporting this claim will be produced as discovery continues

INTERROGATORY NO 19:

Please state your factual basis for and identify the evidence supporting your claim that the inventors and/or its counsel did not identify relevant prior art, including the relevant prior art referred to.

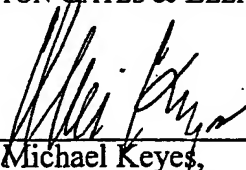
ANSWER:

Answer already provided.

ANSWERS TO INTERROGATORIES dated this 11th day of January, 2002.

PRESTON GATES & ELLIS LLP

By



J. Michael Keyes,
Attorneys for Defendant
AutoSox

AUTO SOX USA, INC.

By: 

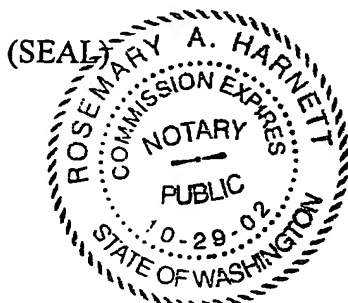
Name: Sam Cassel

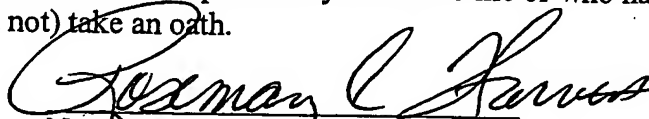
Title: Vice President

STATE OF WASHINGTON

COUNTY OF SPOKANE

BEFORE ME, the undersigned authority, this day of 2001, personally appeared Sam Cassel, who after being first duly sworn, states that he is the person who provided the answers to Plaintiff's First Set of Interrogatories to Defendant Auto Sox USA, Inc., and that the answers provided therein are true and correct, and who is personally known to me or who has produced as identification and who did (did not) take an oath.





Notary Public (signature)

Rosemary A. Harnett
(Typed/Printed name of Notary Public)

My Commission Expires: 10/29/02

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that one original and one copy of Plaintiffs First Set of Interrogatories to Defendant Auto Sox USA, Inc., were served by U.S. Mail on this-9th- day of November, 2001, to: Michael P. McMahon, Esq., Akerman, Senterfitt & Eidson, P.A., 255 S. Orange Avenue, 10th Floor, Orlando, FL 32801 and a copy to: J. Christopher Lynch, Esq., Theresa L. Keyes, Esq., J. Michael Keyes, Esq., Preston, Gates & Ellis, L.L.P., 601 West Riverside Drive, Suite 1400 Spokane, WA 99201-03636.

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